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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

The Roman Catholic Archbishop of San  
Francisco,

Debtor and  
Debtor in Possession.

Case No. 23-30564 (DM)

Chapter 11

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION OF CERTAIN INSURERS FOR  
RELIEF FROM AUTOMATIC STAY TO  
PERMIT CALIFORNIA COVERAGE  
ACTION TO CONTINUE**

Date: November 30, 2023  
Time: 1:30 p.m. Pacific Time  
Place: Via ZoomGov

Objection Deadline: November 16, 2023 at  
4:00 p.m

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Century Indemnity Company, as successor to CCI Insurance Company and Insurance Company of North America, Pacific Indemnity Company, and Westchester Fire Insurance Company as successor in interest to Industrial Underwriters Insurance Company for policies JU835-8355 and JU895-0964 (collectively, the “**Insurers**”) respectfully state as follows in support of the Motion of Certain Insurers for Relief from Automatic Stay to Permit California Coverage Action to Continue (the “**Motion**”), filed contemporaneously herewith:

### **PRELIMINARY STATEMENT**

The Court should lift the automatic stay to allow a pending state-court coverage action (the “**California Coverage Action**”) to proceed in order to provide guidance and certainty on the extent of the Insurers’ and Debtor’s respective contractual rights and obligations for claims brought by survivors of childhood sexual abuse under the California Child Victims Act against the Archdiocese (the “**CCVA Claims**”). The resolution of these state-law contract issues should occur in state court—a court that routinely adjudicates complex insurance coverage disputes and is well-equipped to do so here.

Stay relief is plainly warranted. The extent of the Insurers’ obligations for the CCVA Claims, if any, is hotly disputed. Allowing the state court to provide judicial guidance and resolve the disputes surrounding the alleged contractual obligations of Insurers’ that have been asked to defend and indemnify the Roman Catholic Archbishop of San Francisco (the “**Debtor**” or the “**Archdiocese**”) could help facilitate a global resolution to this chapter 11 case. And even if a global resolution cannot be achieved, the ongoing coverage disputes would still need to be resolved. Thus, whether or not a comprehensive consensual resolution can be achieved through the plan process, the parties should be permitted to seek resolution of the state-law coverage issues through the state-court action.

The California Court is perfectly capable of efficiently resolving the California Coverage Action—which involves non-core, state and insurance law issues—in parallel with the chapter 11 case. Bankruptcy courts have routinely granted stay relief in similar situations where they possess no particular expertise in the legal issues at play, like insurance coverage disputes, and where the state court is the more appropriate forum for the litigation. Indeed, principles of abstention

1 strongly weigh against this Court deciding state-law contract issues that are central to the  
2 California Coverage Action.

3 The Archdiocese and its stakeholders will not be prejudiced if the Court grants stay relief.  
4 In the California Coverage Action, the Insurers simply seek resolution of the parties' respective  
5 rights and obligations for CCVA Claims. The California Coverage Action will not increase  
6 underlying claims against the Archdiocese, nor prejudice abuse survivors because the Insurers'  
7 liability must be determined one way or another under any circumstance.

8 Accordingly, for the reasons discussed further below, the Court should lift the automatic  
9 stay to allow the California Coverage Action to proceed.

## 10 JURISDICTIONAL STATEMENT

11 The Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334, the  
12 Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24 (N.D.  
13 Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for  
14 the Northern District of California. This is a core proceeding under 28 U.S.C. § 157(b). Venue is  
15 proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## 16 FACTUAL BACKGROUND

### 17 A. Abuse Claims Against the Archdiocese

18 In October 2019, Governor Gavin Newsom signed the California Child Victims Act (the  
19 "CCVA"), AB 218, codified as California Code of Civil Procedure § 340.1, et seq (the "CCP").  
20 The CCVA allows survivors of child sexual assault to bring civil lawsuits arising out of their sexual  
21 assault under limited circumstances. Survivors have until their 40th birthday or within five years  
22 of the date the plaintiff discovers, or reasonably should have discovered, that psychological injury  
23 or illness occurring after the age of majority was caused by the sexual assault, whichever is later.  
24 See CCP § 340.1(c).

25 The CCVA also opened a "revival window" during which all survivors (regardless of age)  
26 were permitted to file civil lawsuits. *Id.* § 340.1(q). This window opened on January 1, 2020, and  
27 closed on December 31, 2022. *Id.* The Archdiocese has been named as a defendant in hundreds  
28 of lawsuits under the CCVA alleging childhood sexual abuse. See *Declaration of Paul E. Gaspari*

1 *in Support of Chapter 11 Petition and Debtor's Emergency Motions*, Docket No. 15 (the “**Gaspari**  
2 **Declaration**”), ¶ 9. These lawsuits include claims of abuse by priests and clergy who served the  
3 Archdiocese in senior leadership roles. According to its filings, approximately 537 CCVA  
4 complaints have been filed against the Archdiocese. *Id.* ¶ 9.

5 The CCVA Claims allege sexual abuse by the Archdiocese, its clergy, agents, and  
6 employees from the 1950s through 2008. *Gaspari Declaration*, ¶ 14. Plaintiffs allege that the  
7 Archdiocese or its affiliates knew about the sexual abuse of minors. RJN ¶ 1, Ex. A (Master  
8 Complaint) at ¶ 67. In the Master Complaint for the CCVA Claims, for example, plaintiffs allege  
9 that “the RELIGIOUS ENTITY DEFENDANTS, and each of them, knew or should have known  
10 that the DOE PERPETRATOR was unfit, posed a risk of harm to minor children, and/or posed a  
11 risk of childhood sexual assault to minor children in its care, custody and control.” RJN ¶ 1, Ex.  
12 A (Master Complaint) at ¶ 33. The CCVA Claims further assert that the Archdiocese or its  
13 affiliates committed intentional conduct by hiring, not supervising, or transferring to other posts  
14 clergy about whom they had notice regarding abuse of the plaintiff or other victims.

15 The Archdiocese established the Office of Child and Youth Protection (“**OCYP**”) “to  
16 address allegations of past or current sexual abuse by clergy, religious or other people who work  
17 or volunteer for the Archdiocese.” *See Declaration of Joseph J. Passarello in Support of Chapter*  
18 *11 Petition and Debtor's Emergency Motions*, Docket No. 14 (the “**Passarello Declaration**”), ¶  
19 44. Since 2003, the Archdiocese has incurred more than \$70 million to settle sex abuse cases  
20 against priests and others associated with the church (together with any pending OCYP claims,  
21 “**OCYP Settlement Claims**”). *Id.* ¶¶ 7, 51; Request for Judicial Notice (“**RJN**”) ¶ 5, Ex. E  
22 (Archdiocese Press Release dated August 21, 2023). Insurers paid most of that amount. *Id.*

### 23 **B. The Insurance Policies and the California Coverage Action.**

24 The Archdiocese claimed insurance coverage under insurance policies allegedly issued by  
25 the Insurers and covering periods of time between 1951 to 1972 and 1981 to 1986 (collectively,  
26 the “**Insurer Policies**”). Copies of the policies allegedly issued by the Insurers or evidence of the  
27 alleged policy language for certain of these periods (including alleged primary policies for 1951 to  
28 1960 and 1963 to 1966, and alleged excess policies for 1969 to 1972), however, have not been



1 produced by the Archdiocese. See RJN ¶ 2, Ex. B (Coverage Complaint), ¶¶ 11, 14. Nonetheless,  
2 the Insurers accepted defense of the sexual abuse claims subject to a complete reservation of rights.  
3 *See id.* ¶¶ 51, 62–63.

4 In July 2023, the Insurers commenced the California Coverage Action in the Superior  
5 Court for San Francisco. The California Coverage Actions has been designated as a complex  
6 action. RJN ¶ 3, Ex. C (Coverage Action Civil Case Cover Sheet); RJN ¶ 4, Ex. D (Coverage  
7 Action Docket). The action seeks declarations concerning the parties’ respective rights and  
8 obligations under the Insurer Policies, including a declaration that the Insurers have no duty to  
9 defend or indemnify the Archdiocese for any liability stemming from the sexual abuse claim to  
10 the extent the bodily injuries alleged in the CCVA Claims were expected or intended from the  
11 standpoint of the Archdiocese, that the claims do not involve an “accident” or “occurrence” within  
12 the meaning of the Insurer Policies, and for additional grounds. RJN ¶ 2, Ex. B (Coverage  
13 Complaint). The Coverage Complaint raises a host of additional state-law insurance coverage  
14 issues, including issues concerning notice, bodily injury, attachment points of excess policies at  
15 issue, named insured issues, and other issues involving the duty to defend and indemnify under  
16 the relevant terms, conditions and exclusions contained in the Insurer Policies. *Id.* ¶¶ 64–88. As  
17 an action designated as “complex” case, the California Court has a range of tools and case  
18 management options at its and the parties’ disposal to adjudicate the claims efficiently, including  
19 through phased motion practice and trials on key issues.

## 20 ARGUMENT

21 Ample cause exists for the Court to lift the automatic stay to allow the California Coverage  
22 Action to proceed in the California Court. Indeed, the automatic stay may hinder the successful  
23 negotiation of a consensual plan of reorganization and the California Court is perfectly capable of  
24 adjudicating the pure state-law legal issues present in the California Coverage Action.

### 25 1. The Court Should Lift the Automatic Stay for Cause as the Applicable Factors Weigh 26 in Favor of Stay Relief

27 Pursuant to section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall  
28 be granted for “cause.” 11 U.S.C. § 362(d)(1). If a movant establishes a *prima facie* case for stay

1 relief and the debtor is unable to establish the absence of cause, the court “shall” lift the automatic  
2 stay. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th  
3 Cir. 1990); *In re Duvar Apt., Inc.*, 205 B.R. 196, 200 (B.A.P. 9th Cir. 1996). The ultimate burden  
4 thus is on the debtor to establish an absence of cause for relief. *See* 11 U.S.C. § 362(g) (in hearings  
5 concerning stay relief, the “party opposing such relief has the burden of proof on” all issues other  
6 than the debtor’s equity in property); *Lapierre v. Advanced Medical Spa Inc. (In re Advanced*  
7 *Medical Spa Inc.)*, BAP No. EC-16-1087, 2016 WL 6958130, at \*4 (B.A.P. 9th Cir. Nov. 28,  
8 2016).

9 Courts within the Ninth Circuit consider twelve nonexclusive factors—sometimes referred  
10 to as the “*Curtis*” factors—when determining whether the stay should be lifted to allow pending  
11 litigation in a non-bankruptcy forum. *See In re Advanced Medical Spa Inc.*, 2016 WL 6958130,  
12 at \*4, *In re PG&E Corp.*, No. BR 19-30088-DM, 2019 WL 3889247, at \*1 (Bankr. N.D. Cal. Aug.  
13 16, 2019) (Montali, J.) (*citing In re Curtis*, 40 B.R. 795, 800 (Bankr. D. Utah 1984)). These factors  
14 are:

- 15 (1) whether relief will result in a partial or complete resolution of the issues;
- 16 (2) the lack of any connection with or interference with the bankruptcy case;
- 17 (3) whether the foreign proceeding involves the debtor as a fiduciary;
- 18 (4) whether a specialized tribunal has been established to hear the particular cause of action  
19 and has the expertise to hear such cases;
- 20 (5) whether the debtor’s insurance carrier has assumed full financial responsibility for  
21 defending the litigation;
- 22 (6) whether the action essentially involves third parties, and the debtor functions only as a  
23 bailee or conduit for the goods or proceeds in question;
- 24 (7) whether the litigation in another forum would prejudice the interests of other creditors,  
25 the creditor’s committee and other interested parties;
- 26 (8) whether the judgment claim arising from the foreign action is subject to equitable  
27 subordination;
- 28

- 1 (9) whether movant’s success in the foreign proceeding would result in a judicial lien  
2 avoidable by the debtor under Section 522(f);  
3 (10) the interest of judicial economy and the expeditious and economical determination of  
4 litigation for the parties;  
5 (11) whether the foreign proceedings have progressed to the point where the parties are  
6 prepared for trial; and  
7 (12) the impact of the stay and the balance of hurt.

8 *In re Curtis*, 40 B.R. at 799–800 (internal citations omitted); *see also Kronemyer v. Am.*  
9 *Contractors Indemn. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (“We agree  
10 that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to  
11 grant relief from the automatic stay to allow pending litigation to continue in another forum.”).  
12 Not all of the factors are relevant in every case, nor is a court required to give each factor equal  
13 weight. *In re Advanced Medical Spa Inc.*, 2016 WL 6958130, at \*4.<sup>1</sup>

14 The relevant factors weigh heavily in favor of lifting the automatic stay to allow the  
15 California Coverage Action to proceed in the California Court.<sup>2</sup>

16 **A. The California Coverage Action Will Fully Resolve the Insurers’ Dispute With**  
17 **The Archdiocese**

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21 <sup>1</sup> Several factors do not apply. First, factor three does not apply because the California Coverage  
22 Action does not involve the Debtor as a fiduciary. Factor five does not apply to a dispute between  
the Debtor and an insurer, factor six is inapplicable here, and factors eight and nine do not apply  
to a declaratory judgment action.

23 <sup>2</sup> Some courts in the Ninth Circuit apply four factors—(i) judicial economy, (ii) the expertise of  
24 the state court, (iii) prejudice to the parties, and (iv) whether exclusively bankruptcy issues are  
involved—in determining whether to grant relief from the automatic stay. *Merriman v. Fattorini*  
25 *(In re Merriman)*, 616 B.R. 381, 389 (B.A.P. 9th Cir. 2020). Application of these factors favors  
allowing the California Coverage Action to proceed for the same reasons discussed herein: (i)  
26 judicial economy is served by continuation of the California Coverage Action (*see infra* § 1.C),  
(ii) the state court has expertise and adjudicatory authority to determine the non-core state law  
27 issues in the California Coverage Action (*see infra* § 1.C), (iii) the Archdiocese is not prejudiced  
by continuation of the California Coverage Action, whereas the Insurers are harmed by halting the  
28 California Coverage Action (*see infra* §§ 1.B, 1.D), and (iv) the disputes in the California Coverage  
Action turn on exclusively *non-bankruptcy* state law issues.

1 The California Coverage Action will completely resolve the issues relating to the scope of  
2 the Insurers' and Archdiocese's respective rights and obligations under the Insurer Policies. The  
3 purely state-law claims at issue in the California Coverage Action are best suited for the state court.  
4 *In re Am. Spectrum Realty, Inc.*, 540 B.R. 730, 739 (Bankr. C.D. Cal. 2015). This plainly weighs  
5 in favor of stay relief. *See* Order Granting Limited Relief from the Automatic Stay, *In re Plant*  
6 *Insulation Co.*, No. 09-31347, Docket No. 108 (Bankr. N.D. Cal. June 2, 2009) (granting relief  
7 from stay to permit declaratory relief action regarding availability of insurance to proceed in San  
8 Francisco County Superior Court).

9 **B. Resolution of the California Coverage Action Will Benefit the Debtor and All**  
10 **Stakeholders and Will Not Interfere with the Chapter 11 Cases**

11 Stay relief is warranted here because the pending state court action will not interfere with  
12 the pending chapter 11 case and assist the parties in efforts to achieve a more global resolution of  
13 pending issues for the benefit of all stakeholders. *See, e.g., Cont'l Casualty Co. v. Pfizer, Inc. (In*  
14 *re Quigley, Inc.)*, 361 B.R. 723, 744 (Bankr. S.D.N.Y. 2007) ("stay relief will have a greater chance  
15 of encouraging a complete resolution of the issues ... and will promote 'the interests of judicial  
16 economy and the expeditious and economical resolution of litigation.'").<sup>3</sup> Here, the pendency of  
17 the California Coverage Action will not interfere with the chapter 11 case as the litigation can  
18 simply proceed on a parallel track in the California Court. *See In re Am. Spectrum Realty, Inc.*,  
19 540 B.R. at 739–40 (granting stay relief when debtor merely wanted to delay inevitable state court  
20 litigation until after plan was filed).

21 If recent mass tort chapter 11 cases are any indication, the optimal outcome for the parties  
22 is a global settlement among the Debtor, the abuse survivors and other creditors, and the Insurers,  
23 which would contemplate the establishment of a trust for the benefit of abuse survivors. Indeed,  
24 the Archdiocese already has indicated that its goal is to negotiate a consensual resolution to the  
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26  
27 <sup>3</sup> *See also In re Marvin Johnson's Auto Serv.*, 192 B.R. 1008, 1018–19 (Bankr. N.D. Ala. 1996)  
28 (lifting stay to allow a claim against the estate to be reduced to sum certain because otherwise "the  
case may be in limbo" and resolution of the state court action would not cause an "undue" delay  
in the administration of the case).

1 issues in this chapter 11 case. *See* Passarello Declaration, ¶ 63. Potential insurance recoveries  
2 will no doubt be alleged to provide one of the sources of payment for abuse claimants and the  
3 insurance providers are thus an integral participant in the settlement and plan process.  
4 Consequently, determining the Insurers' and Debtor's respective rights and obligations under the  
5 Insurance Policies would, at a minimum, provide an important data point to the parties with respect  
6 to settlement discussions and negotiations. Moreover, absent a global settlement or resolution of  
7 the insurance coverage issues, the Debtor and Insurers are likely to incur potentially unnecessary  
8 costs in connection with plan confirmation on a contested basis.

9 Moreover, absent a global settlement, to the extent a plan was to be confirmed that allowed  
10 the Debtor or a trust to pursue non-settling insurers for abuse claims resolved within or outside of  
11 this Chapter 11 case, the same state-law coverage issues would remain to be resolved. Thus, it  
12 would be far more efficient to allow the California Coverage Action to provide much-needed  
13 guidance to the parties on their respective rights and obligations irrespective of a global settlement  
14 can be achieved. *See In re Cicale*, No. 05-14462 (AJG), 2007 WL 1893301, at \*4 (Bankr.  
15 S.D.N.Y. June 29, 2007) (stay should be lifted because critical issue would need to be addressed  
16 regardless of whether stay was lifted).

17 Courts have lifted the stay where the debtor is not prejudiced by the stay relief. *See, e.g.,*  
18 *In re Quintrall*, No. ADV. 06-90399, 2007 WL 7540996, at \*4 (B.A.P. 9th Cir. July 5, 2007)  
19 (Montali, J., Hollowell, J., and Brandt, J.) (affirming bankruptcy court's order granting relief from  
20 stay as "the bankruptcy estate suffered 'no great prejudice' from having the action proceed in state  
21 court, as the enforcement of any state court judgment would be limited to insurance coverage and  
22 non-estate assets."); *see also In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 565 (B.A.P.  
23 9th Cir. 1995) ("Congress has stated: It will often be more appropriate to permit proceedings to  
24 continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in  
25 order to leave the parties to their chosen forum and to relieve the bankruptcy court from many  
26 duties that may be handled elsewhere.") (citing S.Rep. No. 989, reprinted in 1978 U.S.C.C.A.N.  
27 5836.)  
28

1 Here, allowing the California Coverage Action to proceed in parallel with the chapter 11  
2 case will not prejudice the Archdiocese. It does not create any additional abuse claims against the  
3 Debtor or prejudice the Debtor's rights with respect to pending or future claims by survivors, and  
4 the Debtor already has separate insurance coverage counsel with extensive knowledge of the  
5 Debtor's insurance programs and handling complex insurance disputes in state and federal courts.  
6 See Docket No. 98 (Application to Employ Weinstein & Numbers, LLP as Insurance Counsel).  
7 Thus, the Debtor and its counsel are fully capable of handling the California Coverage Action  
8 during the pendency of this case.

9 That the California Coverage Action is a declaratory judgment action also favors stay  
10 relief. When the debtor could just as easily be the plaintiff in a dispute (in which case the automatic  
11 stay would not apply), the application of the automatic stay to that identical dispute when the  
12 debtor happens to be the defendant is "largely a function of happenstance." *In re AP Orangevale,*  
13 *LLC*, No. 23-10687 (CTG), 2023 WL 5093819, at \*9 (Bankr. D. Del. Aug. 8, 2023). Given that  
14 the California Coverage Action is an action that the Archdiocese could have just as easily  
15 commenced, stay relief is particularly appropriate. See *id.*, at \*9 (lifting the stay to allow  
16 declaratory judgment action to continue).

17 This Court's recent decision in the PG&E chapter 11 case is instructive. There, the Court  
18 lifted the automatic stay to allow an official committee of torts claimants to pursue a state court  
19 litigation to determine the debtor's liability with respect to a particular wildfire. The Court  
20 reasoned that "relief from stay will definitively bring a resolution as to Debtors' liability in the  
21 [wildfire], and provide an important data point that most likely will facilitate resolution of the  
22 wildfire tort claims in this case." *In re PG&E Corp.*, 2019 WL 3889247, at \*2. The Court further  
23 noted that the state court proceeding would proceed on a "parallel track" with the chapter 11 case  
24 and that other parties would not be prejudiced by stay relief because, in part, the state court action  
25 was filed prior to the chapter 11 case. *Id.* Like the state court proceeding in *PG&E*, (i) the  
26 California Coverage Action was filed prior to the Petition Date and can proceed on a parallel track  
27 with this chapter 11 case and (ii) the Insurers' and Debtor's respective rights and obligations with  
28 respect to the CCVA Claims is an important "data point" in the resolution of this case.

1           These factors weigh heavily in favor of stay relief. Indeed, numerous other courts have  
2 also allowed insurance coverage actions to proceed in state court during the pendency of a debtor’s  
3 chapter 11 case. *See, e.g., In re Imerys Talc Am., Inc.*, No. 19 10289, Docket No. 3174 (Bankr. D.  
4 Del. Mar. 19, 2021); *In re Duro Dyne Nat’l Corp.*, No. 18-27963, Docket No. 350 (Bankr. D.N.J.  
5 Dec. 19, 2018); *In re Kaiser Gypsum Co., Inc.*, No. 16 31602, Docket Nos. 430, 477 (Bankr.  
6 W.D.N.C., Oct. 12, 2017); *In re Mid-Valley Inc.*, No. 03-35592 (JKF), Docket No. 541 (Bankr.  
7 W.D. Pa. Feb. 10, 2004).<sup>4</sup>

8           **C. California State Court is the Optimal Court to Decide the Non-Core State Law**  
9           **Issues in the California Coverage Action.**

10           Stay relief is also appropriate here because the California Coverage Action involves non-  
11 core issues of state law, which the California Court is the optimal court to adjudicate. *See In re*  
12 *Am. Spectrum Realty, Inc.*, 540 B.R. at 740–41 (stay relief appropriate for adjudication of state law  
13 claims in state court over which the bankruptcy court would not have adjudicatory authority). In  
14 the Ninth Circuit, “actions that do not depend on bankruptcy laws for their existence and could  
15 proceed in another court are considered non-core.” *Security Farms v. International Brotherhood*  
16 *of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997); *see also In re GACN, Inc.*, 555 B.R. 684, 693  
17 (B.A.P. 9th Cir. 2016). In *GACN*, for example, the BAP explained that the declaratory relief action  
18 was not a core proceeding because “the underlying dispute solely concerns the parties’ rights and  
19 liabilities under a prepetition insurance contract, which was entered into pursuant to state law  
20 rather than as a part of a bankruptcy case.” *Id.* at 698; *see also Weinstein v. Kuhl*, No. 18-cv-  
21 01351, 2018 WL 4904901, at \*4 (N.D. Cal. Oct. 9, 2018) (declaratory judgment claim seeking  
22 interpretation of insurance policy is non-core).<sup>5</sup>

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24           <sup>4</sup> *See also* Feb. 2, 2004 Hr’g Tr., *In re Congoleum Corp.*, No. 03-51524, Docket No. 294, at  
25 43:13–15 (Bankr. D.N.J. Feb. 2, 2004) (nothing that “all parties will benefit from a determination  
of the coverage issues, and the state court is the most expeditious place to get that determination.”).

26           <sup>5</sup> *See also Green v. Mitsui Sumitomo Ins. Co. (In re TK Holdings, Inc.)*, 653 B.R. 33, 42–46 (D.  
27 Del. 2023) (insurance coverage dispute is non-core); *Cachet Fin. Servs. v. Everest Nat’l Ins. Co.*  
28 *(In re Cachet Fin. Servs.)*, 652 B.R. 341, 346 (C.D. Cal. 2023) (insurance coverage dispute is  
exclusively non-core); *Certain Underwriters at Lloyd’s London – Syndicate 1861 v. Daileader*,  
No. 22 Civ. 2038, 2023 WL 185518, at \*\*10–12 (S.D.N.Y. Jan. 13, 2023) (same); *Roman Catholic*



1 Here, the California Coverage Action relates exclusively to state-law contract rights and  
2 obligations under contracts issued by the non-debtor Insurers. Consequently, stay relief is  
3 appropriate. *See In re Cath. Bishop of N. Alaska*, No. F08-00110-DMD, 2008 WL 8652363, at \*3  
4 (Bankr. D. Alaska June 27, 2008) (granting motion for relief from stay in the chapter 11 cases of  
5 the Catholic Bishop of Northern Alaska so that the non-core “issue of insurance coverage can be  
6 determined”).<sup>6</sup> Further, unlike core matters, the state court is especially qualified to adjudicate  
7 state-law insurance issues. *See Roman Catholic Diocese of Rockville Ctr. v. Arrowood Indemn.*  
8 *Co.*, No. 20-CV-11011, 2021 WL 1978560 (S.D.N.Y. May 17, 2021) (under *Stern v. Marshall*,  
9 bankruptcy court does not have authority to finally adjudicate insurance coverage dispute).

10 By contrast, the California Court is well-suited to handle complex insurance cases. The  
11 Complex Division has experienced judges, has overseen complex insurance coverage cases  
12 (including cases similar to the California Coverage Action), and is subject to procedures to  
13 facilitate the expeditious resolution of civil litigations like the California Coverage Action. The  
14 California Coverage Action was designated as “complex” and by the Rules of Court, is “an action  
15 that requires exceptional judicial management to avoid placing unnecessary burdens on the court  
16 or the litigants and to expedite the case, keep costs reasonable, and promote effective decision  
17 making by the court, the parties, and counsel.” *See* Cal. Rules of Court, Civil Rules, Rule 3.400(a).  
18 Given the California Court procedures, the California Coverage Action can be litigated in a timely  
19 manner, including by phasing the issues if necessary, and utilizing a range of procedures to  
20

21  
22 *Diocese of Rockville Centre v. Arrowood Indemnity Co.*, No. 20-CV-11011, 2021 WL 1978560,  
23 at \*\*5–8 (same); *In re John A. Rocco Co., Inc.*, No. 10-18799, 2015 WL 1727474, at \*4 (Bankr.  
24 D.N.J. Apr. 13, 2015) (“Because the issue of coverage under an insurance policy is a question of  
25 state law that routinely arises outside the context of a bankruptcy case, claims for insurance  
26 coverage are typically considered non-core.”); *In re Cath. Bishop of N. Alaska*, No. ADV F08-  
27 90019-DMD, 2008 WL 8657847, at \*3 (Bankr. D. Alaska Sept. 16, 2008) (“insurance coverage  
28 claims” arising out of allegations of “sexual abuse by priests and other affiliated with the Diocese  
... are non-core claims”); *Matter of United States Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir.  
1997) (declaratory judgment action to determine scope of insurance coverage is not core  
proceeding).

<sup>6</sup> *See also Mt. McKinley Ins. Co. v. Corning Inc.*, 399 F.3d 436, 450 (2d Cir. 2005) (vacating stay  
of asbestos-related coverage litigation, finding that claims raised in declaratory judgment action  
were not core to the bankruptcy proceeding).



1 efficiently manage and resolve the litigation. Thus, this factor weighs strongly in favor of stay  
2 relief.

3 Additionally, interests of judicial economy and the potential impact of the automatic stay  
4 on the parties likewise favor stay relief. “The legislative history of section 362(a) indicates that  
5 judicial economy provides sufficient cause to lift the stay to permit the prosecution of actions  
6 pending elsewhere against a debtor.” *In re Quintrall*, No. ADV. 06-90399, 2007 WL 7540996, at  
7 \*4 (B.A.P. 9th Cir. July 5, 2007) (Montali, J., Hollowell, J., and Brandt, J.) (citing *In re Santa*  
8 *Clara County Fair Ass’n, Inc.*, 180 B.R. 564, 565 (B.A.P. 9th Cir. 1995)).

9 As discussed above, resolution and guidance on the coverage issues at stake in the  
10 California Coverage Action would provide a meaningful data point the parties can factor into  
11 anticipated settlement and plan-related negotiations. California Civil Procedure § 1062.3(a)  
12 mandates that actions for declaratory relief “shall be set for trial at the earliest possible date and  
13 shall take precedence over all other cases.” The California Court, therefore, can efficiently and  
14 quickly adjudicate the issues in the California Coverage Action, employing state-law procedures  
15 designed to manage and timely resolve the proceedings, while this Court addresses the issues more  
16 directly connected to the chapter 11 case. Accordingly, the fact that the California Coverage  
17 Action involves non-core issues of state law that the California Court is well-equipped to decide  
18 while also providing judicial economy strongly weighs in favor of lifting the stay.

19 **D. The Insurers are Harmed by Halting the California Coverage Action.**

20 The Insurers have incurred millions of dollars of defense and indemnity costs, and will  
21 undoubtedly incur more costs in connection with the resolution and payment of the underlying  
22 CCVA Claims. The Insurers require clarity and certainty regarding their alleged obligations with  
23 respect to these significant sums, and (as described above), presumably as the Debtor does as well.

24 Staying the California Coverage Action will prejudice the Insurers by allowing this  
25 uncertainty to persist and by denying them the ability to resolve the coverage issues in the proper  
26 forum. *See In re Kossoff PLLC*, No. 21-10699 (DSJ), 2023 WL 3361053, at \*6 (Bankr. S.D.N.Y.  
27 May 10, 2023) (insurer prejudiced because it has to reserve funds and incur ongoing legal and  
28 administrative expenses in connection with stayed coverage dispute).

1 The disputed coverage issues must be resolved eventually by the appropriate court. At  
2 some point, the parties must address coverage rights and defenses surrounding the CCVA Claims  
3 the Debtor seeks to impose on the Insurers, and thus the Insurers would be prejudiced by further  
4 delaying resolution of those issues in their proper forum. *See, e.g., SoftView LLC v. Apple Inc.*,  
5 Civ. No. 10-389-LPS, 2012 WL 3061027 (D. Del. July 26, 2012) (“[R]esuming litigation after a  
6 protracted stay could raise issues with stale evidence, faded memories, and lost documents.”).

7 Because the Debtor will not be harmed by stay relief, and the Insurers will be harmed by  
8 the continuation of the stay, this factor further weighs in favor of stay relief.

## 9 **2. Principles of Abstention Also Weigh in Favor of Stay Relief**

10 Cause exists to lift the automatic stay because abstention is appropriate. *See In re PG&E*  
11 *Corp.*, No. BR 19-30088-DM, 2019 WL 3889247, at \*1 (“If a bankruptcy court may abstain from  
12 deciding issues that could be decided by an imminent state court trial involving the same issues,  
13 cause may exist to allow the state court trial to go forward.”); *see also In re Tucson Estates, Inc.*,  
14 912 F.2d at 1166. 28 U.S.C. § 1334(c)(1) provides that “[n]othing in this section prevents a district  
15 court in the interest of justice, or in the interest of comity with State courts or respect for State law,  
16 from abstaining from hearing a particular proceeding arising under title 11 or arising in or related  
17 to a case under title 11.” 28 U.S.C. § 1334(c)(1). Courts in the Ninth Circuit have considered the  
18 following factors in determining whether to abstain from hearing a proceeding pursuant to  
19 § 1334(c)(1):

20 (1) the effect or lack thereof on the efficient administration of the estate if a court  
21 recommends abstention, (2) the extent to which state law issues predominate over  
22 bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the  
23 presence of a related proceeding commenced in state court or other non-bankruptcy  
24 court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree  
25 of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the  
26 substance rather than form of an asserted ‘core’ proceeding, (8) the feasibility of  
severing state law claims from core bankruptcy matters, (9) the burden of [the  
bankruptcy court’s] docket, (10) the likelihood that the commencement of the  
proceeding in bankruptcy court involves forum shopping by one of the parties, (11)  
the existence of a right to a jury trial, and (12) the presence in the proceeding of non-  
debtor parties.

27 *In re Tucson Estates, Inc.*, 912 F.2d at 1167 (9th Cir. 1990); *see also In re Pac. Gas & Elec. Co.*,  
28 279 B.R. 561, 570 (Bankr. N.D. Cal. 2002) (Montali, J.) (holding that the when the factors

1 enumerated in *Tucson Estates* weighed in favor of abstaining, the bankruptcy court should also lift  
2 the stay to allow the state court action to proceed).

3 Although detailed discussion of these factors is not necessary at this juncture given that the  
4 Debtor has not asked this Court to decide any of the coverage issues at issue in the California  
5 Action, abstention would be appropriate were the Debtor to do so.<sup>7</sup> As discussed above, the  
6 California Coverage Action is solely based on state-law insurance and contract law and does not  
7 assert any federal cause of action. The Insurers have a right to a jury trial in the California Coverage  
8 Action. California courts have repeatedly held “there is a right to a jury in declaratory relief actions  
9 involving insurance coverage disputes.” *Entin v. Superior Ct.*, 208 Cal. App. 4th 770, 778 (2012)  
10 (citing cases); *see also Century Sur. Co. v. Saidian*, No. CV 12-7428 SS, 2016 WL 6440140, at  
11 \*12 (C.D. Cal. Mar. 16, 2016) (applying California law). Further, “[w]hether an action is a core  
12 or a noncore proceeding is a factor to be considered in making both mandatory and permissive  
13 abstention rulings.” *In re GACN, Inc.*, 555 B.R. at 693. As discussed above, a declaratory  
14 judgment action regarding coverage under a prepetition insurance policy is a non-core proceeding.  
15 *Id.*; *see supra* [n.5.]

16 Permitting the California Action to proceed will not interfere with the efficient  
17 administration of the Debtor’s estate. To the contrary, considerations of efficiency weigh in favor  
18 of the Court abstaining in favor of the California Court, because the California Court has  
19 experience and familiarity with insurance coverage actions generally and all the relevant entities  
20 are parties to that action. As discussed above, the California Court has designed procedures to  
21 facilitate the expeditious resolution of the California Coverage Action, which the Insurers have  
22 invoked so that the California Coverage Action is litigated in a timely manner. The state-law  
23 issues include complex insurance coverage issues that the California Court is best situated to  
24 resolve. Given that the California Action was filed prepetition in California where Debtor is  
25

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26  
27 <sup>7</sup> The Insurers reserve the right to address any abstention issues in greater detail in the event  
28 Debtor does attempt to seek rulings from this Court on any state-law coverage issues under the  
terms, conditions, or exclusions in the Insurer Policies. The Insurers briefly address some of the  
key factors here to explain further why stay relief is warranted.

1 located, any effort to have those state-law issues decided by this Court would raise forum-shopping  
2 concerns, and, in any event, would unnecessarily burden this Court's docket.

3 Accordingly, stay relief is appropriate here because the principles of abstention further  
4 illustrate that the California Court is the more appropriate forum for the California Coverage  
5 Action.

### 6 CONCLUSION

7 For the reasons set forth herein, the Insurers respectfully requests that the Court lift the  
8 automatic stay to allow the California Coverage Action to proceed in the California Court.

9 Respectfully submitted,

10 Dated: October 27, 2023

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